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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/997,458	11/30/2001	Carol Ivash Gabele	AUS920000651US1	6180
28722	7590	02/22/2006	EXAMINER	
BRACEWELL & PATTERSON, L.L.P.			DAY, HERNG DER	
P.O. BOX 969			ART UNIT	
AUSTIN, TX 78767-0969			PAPER NUMBER	
			2128	
DATE MAILED: 02/22/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/997,458	GABELE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Herng-der Day	2128	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 January 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 March 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/13/06</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This communication is in response to Applicants' Amendment ("Amendment") to Office Action dated October 14, 2005, mailed January 9, 2006, and received by PTO January 13, 2006.

1-1. Claims 1-18 have been amended. Claims 1-18 are pending.

1-2. Claims 1-18 have been examined and rejected.

### ***Drawings***

2. The replacement drawing sheets of Figures 3A-7, received on January 13, 2006, are acceptable.

3. The drawings are objected to for the following reasons. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include **all** of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the Examiner, the Applicants will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3-1. Figures 8C-14C should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g).

*Specification*

4. The disclosure is objected to because of the following informalities:

Appropriate correction is required.

4-1. It appears that “execution step 1627 of FIG. 16C”, as described in the last fourth line of page 4 in Applicants’ Amendment received January 13, 2006, should be “execution step 1627 of FIG. 16B”.

4-2. It appears that “instrumentation server 2210”, as described in line 10 of page 134, should be “harvest testcase server 2210”.

4-3. It appears that “Figures 21A-21C”, as described in line 15 of page 138, should be “Figures 22A-22C”.

4-4. It appears that “harvest events are collected in harvest testcase bucket”, as described in line 22 of page 140, should be “harvest testcase are collected in harvest testcase bucket”.

*Claim Rejections - 35 USC § 112*

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

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6-1. The amended independent claim 1 recites the limitations, “to determine whether previous occurrences of the identified harvest events have been recorded in association with the simulation model” and “responsive to determining that previous occurrences of said identified harvest events have not been recorded in association with said simulation model, delivering a copy of said testcase to a harvest testcase bucket” in lines 10-14 of the claim, and the amended independent claims 7 and 13 recite the same limitations, which do not appear to have support in the original disclosure. For example, as described in the specification at page 126, lines 19-23, “API entry point 2202 then *compares* the harvest event occurrences as recorded by the status of harvest flags 423a-423n with the content of local harvest hit table 2201 to *determine* if any preliminarily non-redundant harvest events (i.e. harvest events triggered during the testcase that do not match those recorded in local harvest hit table 2201) have occurred” and at page 128, lines 21-24, “Subsequent to detecting and recording newly occurring harvest events in master harvest hit table 2205, harvest manager program 2215 returns an indication, over the direct network connection on network 1720, to API entry point 2202 to *deliver* a copy of the current testcase to harvest testcase bucket 2300”, only preliminarily non-redundant harvest events or newly occurring harvest events are concerned. However, those concerned harvest events may even have no previous occurrences.

6-2. Claims not specifically rejected above are rejected as being dependent on a rejected claim.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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8. Claims 5 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8-1. Claim 5 recites the limitation “said delivering said testcase to said harvest testcase server” in lines 1-2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

8-2. Claim 6 recites the limitation “said delivering said testcase to said harvest testcase server” in lines 1-2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

#### ***Recommendations***

9. Claim 2 recites the limitation “said simulation batch farm” in lines 1 and 3 of the claim. For clarification purpose, the Examiner suggests that “said simulation batch farm” be replaced with “said batch simulation farm”.

10. Claim 8 recites the limitation “said simulation batch farm” in lines 1 and 3 of the claim. For clarification purpose, the Examiner suggests that “said simulation batch farm” be replaced with “said batch simulation farm”.

11. Claim 14 recites the limitation “said simulation batch farm” in lines 2 and 3-4 of the claim. For clarification purpose, the Examiner suggests that “said simulation batch farm” be replaced with “said batch simulation farm”.

#### ***Applicants' Arguments***

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12. Applicants argue the following:

**12-1. OBJECTIONS TO THE DRAWINGS**

(1) "FIGS. 8C-14C have not been so amended since the subject matter depicted therein is in fact not prior art with respect to the subject matter contained in the present application" (page 13, paragraph 2, Amendment).

**12-2. DOUBLE PATENTING**

(2) "Applicants submit herewith a terminal disclaimer in compliance with 37 CFR 1.321(c)" (page 13, paragraph 6, Amendment).

**12-3. CLAIMS REJECTIONS UNDER 35 U.S.C. §112**

(3) "Claims 4, 10, and 16 have been amended to replace 'said locally recorded harvest event' with 'a locally recorded harvest event' to remove the correctly noted antecedent basis problem" (page 13, paragraph 7, through page 14, paragraph 1, Amendment).

**12-4. CLAIM REJECTIONS UNDER 35 U.S.C. §101**

(4) "Claims 13-18 have been amended to now recite 'a computer-readable medium having encoded thereon computer-executable instructions'" (page 14, paragraph 2, Amendment).

**12-5. CLAIM REJECTIONS UNDER 35 U.S.C. §103**

(5) "The foregoing traversals notwithstanding, independent claims 1, 7, and 13 have been amended to more clearly characterize and distinguish Applicants' proposed invention from the prior art" (page 15, paragraph 2, Amendment).

***Response to Arguments***

13. Applicants' arguments have been fully considered.

**13-1.** Applicants' argument (1) is not persuasive. Applicants are encouraged to point out any difference between Figures 8C-14C of this instant application and Figures 8C-14C of U.S. Patent No. 6,920,418 B2 issued July 19, 2005, and filed December 30, 2000.

**13-2.** Applicants' argument (2) is persuasive. The rejections of claims 1, 7, and 13 under the judicially created doctrine of obviousness-type double patenting in Office Action dated October 14, 2005, have been withdrawn.

**13-3.** Applicants' argument (3) is persuasive. The rejections of claims 4, 10, and 16 under 35 U.S.C. 112, second paragraph, in Office Action dated October 14, 2005, have been withdrawn.

**13-4.** Applicants' argument (4) is persuasive. The rejections of claims 13-18 under 35 U.S.C. 101, in Office Action dated October 14, 2005, have been withdrawn.

**13-5.** Response to Applicants' argument (5). The amendment of claims 1, 7, and 13 does not appear to have support in the original disclosure as detailed in item 6-1 above.

### ***Conclusion***

**14.** Applicants' amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicants are reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37



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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

15. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Herng-der Day whose telephone number is (571) 272-3777. The Examiner can normally be reached on 9:00 - 17:30.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: (571) 272-2100.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Kamini S. Shah can be reached on (571) 272-2279. The fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Herng-der Day  
February 15, 2006

*H.D.*

*Thayphan  
Thai Phan  
Patent Examiner  
Au: 2128*